



DEPARTMENT OF THE ARMY

U.S. Army Corps of Engineers
WASHINGTON, D.C. 20314-1000

REPLY TO
ATTENTION OF:

CEPR-P (715)

31 MAR 1999

MEMORANDUM FOR COMMANDERS/DIRECTORS, ALL USACE COMMANDS

SUBJECT: PARC Instruction Letter 99-7, Further Clarification of Y2K Contract Language Guidance

1. Reference:

- a. CEPR-P memorandum, dated 18 September 1998, subject: Year 2000 (Y2K) Compliance.
- b. CEPR-P memorandum, dated 1 July 1998, subject: Year 2000 (Y2K) Compliance
- c. CEIM-P memorandum, dated 20 April 1998, subject: "Year 2000" or "Y2K" and Infrastructure.

2. In accordance with reference 1a, new contracts procuring information technology must include the requirement for Y2K compliance. Reference b, provides recommended language for contracting officers to use when requiring Y2K compliance in their USACE procurements (new contracts and modification of existing contracts). On-going active contracts should all have been reviewed by 31 December 1998 for non-Y2K compliance per reference c.

3. In response to questions from various USACE contracting offices regarding the above language, the following clarifications are provided.

a. First, the referenced guidance is not intended to direct the contracting officer on how best to bring existing contracts into compliance. Should the contracting officer determine a requirement exists, the appropriate, referenced, language shall be used when requiring Y2K compliance. If the contracting officer determines that it is not in the government's best interests to use the recommended language when requiring compliance, he or she shall document the reasons for this decision in writing in the contract file.

b. As with any contract formation there must be an exchange of consideration, therefore, when the government requires Y2K compliant technology or services that were not originally contemplated when the contract was awarded, the government must pay for those new goods and/or services. The Corps may not unilaterally require a contractor to provide Y2K compliant technology or to provide an inventory of major components containing Y2K compliant technology without paying for those goods/services. Some situations may exist in which the contractor should have anticipated a Y2K compliance requirement when proposing/bidding on a



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project. These are unique cases in which the contracting officer must work out a solution in consultation with legal counsel.


d. A question was asked regarding whether the Government needs to issue a new task order to obtain Y2K compliance for previously delivered products or does incorporation of the clause into the basic contract automatically grant us the right to expect Y2K compliance, retroactively, at no cost? The intent of reference 1a. with regard to delivery/task orders is to restrict Corps' contracting officers from making further procurements of non-Y2K compliant technology in accordance with Army guidance. The recommended language in reference 1b. is to be included in that delivery/task order and all future delivery/task orders when requiring new information technology/services. Previous work completed under a contract which is non-compliant may be made compliant (as discussed in paragraph 3a. -- as the contracting officer determines) either through a separate contract, a modification to the basic contract for such goods/services, or by awarding a separate task order specifically for that purpose (assuming the contractor is capable of remedying their previous efforts.)

d. With regard to Architect and Engineering contracts, the recommended language in reference 1b., paragraph 3d., is changed to state "Year 2000 Compliance; the Architect/Engineer (A-E) shall specify that any hardware, firmware, software, and information technology systems separately or in combination with each other or other elements identified in the documents developed under this contract shall be year 2000 compliant in accordance with FAR 39.106."

e. Lastly, the requirement for Y2K compliance in Job Order Contracts (JOC) is regarded as a non pre-priced task or item which is not included in the Unit Price Book. Any new requirement or modification to a JOC requiring Y2K compliance must, therefore, be negotiated separately.

4. My point of contact for this action is LTC Martin R. Tillman at (202) 761-8641.

FOR THE COMMANDER:


BUNNATIVE H. GREENHOUSE
Principal Assistant Responsible
for Contracting

CF: Directors/Chiefs of Contracting